

FILED

August 13, 2021

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**BY: M. Trujillo
DEPUTY**BRANDON CALLIER,****Plaintiff,****v.****NATIONAL UNITED GROUP, LLC, a Texas
Limited Liability Company, MULBERRY
MANAGEMENT CORPORATION, d/b/a
OSCAR MANAGEMENT CORPORATION, a
Delaware Corporation, CR INSURANCE GROUP
LLC, a Florida Limited Liability Company,
HEALTH ONE CORP, a Florida Corporation,
SUSAN CARRASCO, ALEXA ASSURANCE
CORP, a Florida Corporation, ABIGAIL VELEZ,
RICARDO MOREIRA, MARIA ALLEN
CARDONA, ALLEN INSURANCE SERVICES,
INC, a Florida corporation, CARLOS
RODRIGUEZ, LPV SERVICES, INC., LIZA
POLANCO****Defendants.****Case # 3:21-CV-00071-DB****PLAINTIFF'S RESPONSE TO DEFENDANT MULBERRY MANAGEMENT
CORPORATION d/b/a OSCAR MANAGEMENT CORPORATION'S MOTION TO
DISMISS PLAINTIFF'S AMENDED COMPLAINT**

NOW COMES PLAINTIFF BRANDON CALLIER with his response to Defendant
Mulberry Management Corporation d/b/a Oscar Management Corporation's Motion To Dismiss
Plaintiff's Amended Complaint herein and will show as follows:

I. JURISDICTION

Oscar Management Corporation (Oscar) is licensed and registered with the Texas
Department of Insurance and has been licensed to provide life, accident, and health insurance to

Texas Residents since July 1, 2015. Oscar's license number is 14475407. Oscar insurance employs both Texas residents, and non-Texas residents, as licensed insurance agents who market and sell Oscar insurance products on behalf of Oscar Insurance. Oscar also enrolled itself as one of only a handful of insurance companies to market and sell health insurance as part of the Health Insurance Marketplace ("Obamacare"). Oscar licenses insurance agents and insurance agencies to sell these products to Texas citizens on its behalf.

In 2018 Defendant Oscar agreed to pay an administrative fine of \$75,000 for violations of Texas Department of Insurance codes. Though Oscar did not admit to wrong doing in Consent Order 15882, Oscar did acknowledge the State of Texas' authority over Oscar. Oscar was accused of not providing 761 enrollees (Texas residents) adverse determinations that did not provide its enrollees with complete and accurate information about the adverse determination appeal rights. The state of Texas used its jurisdiction to protect its citizens harmed by Oscar.

Similarly, this court has personal jurisdiction over Defendant Oscar. Oscar Insurance purposefully availed itself of the laws and protections of the State of Texas when it licensed itself as a licensed life, accident and health insurance provider in the State. The genesis of this case is unwanted robocalls marketing and selling of health insurance on behalf of Defendant Oscar. These calls are being made directly to Texas residents like Plaintiff. Defendant Oscar employs Texas residents to market these products. Defendant Oscar has submitted to the laws, regulations, and administrative authority of the State of Texas as a condition of holding this insurance license. Oscar has established the required contacts to establish themselves at home in the forum state. For these reasons This Court has personal jurisdiction over Defendant Oscar.

II. OSCAR IS VICARIOUSLY LIABLE

Defendant Oscar has been aware of the unwanted phone calls being made on its behalf for more than six months and has done nothing to stop the calls because the calls benefit Defendant Oscar financially. At this point in the proceedings Defendant Oscar is privy to information unavailable to Plaintiff. Oscar is aware of the sales agent who sold the health insurance policies in this complaint. Oscar is aware of the insurance agencies selling their products. Oscar has the ability to gain the identity of the anonymous robocallers who continue to harass Plaintiff to this very date. Oscar has not taken the reasonable steps of asking the insurance agent and/or insurance agency the identity/source of the illegal robocalls because Defendant Oscar does not want the marketing of its products via the illegal robocalls to cease.

Plaintiff at this point in the proceedings cannot be expected to know the identity of the anonymous robocallers. Plaintiff cannot allege the exact specific relationship Oscar holds with the anonymous robocallers until Discovery is conducted. Plaintiff cannot know if Oscar employs the robocallers directly or through a third party. What Plaintiff does know is that if Oscar wanted, Oscar could make the illegal robocalls stop, but Oscar chooses to not do so because it benefits Oscar financially. By refusing to stop the illegal calls Oscar has ratified the behavior. Plaintiff has received at least 100 additional calls since filing the original complaint. Oscar continues to accept referrals and sell insurance policies that are generated as a result of the illegal robocalls.

CONCLUSION

Oscar holds a Texas Department of Insurance license and has done so for more than six years. Oscar employs insurance agents in Texas. Oscar sells insurance to Texas residents. Oscar submitted to the personal jurisdiction of Texas when it obtained an insurance license with Texas and began to purposefully target Texas residents to sell insurance.

Oscar has ratified the behavior of the anonymous robocallers by refusing to stop the behavior and continuing to accept insurance policies that are sold as a result of the illegal robocalling campaign. Oscar is aware of the robocallers and accepts the referrals that are generated as a result of the anonymous robocallers. Plaintiff cannot determine the exact relationship at this point in the proceedings. At minimum, Plaintiff should be granted Discovery to determine the identify of the anonymous robocallers and their exact relationship with Defendant Oscar as Oscar continues to allow the calls and benefit financially from these calls. For these reasons, Defendant Oscar's motion should be denied in its entirety.

August 13, 2021,

Respectfully Submitted,

Brandon Callier

Brandon Callier
Pro-se
6336 Franklin Trail
El Paso, TX 79912
915-383-4604